



September 30, 2008

Commissioner Philip Giudice
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Dear Commissioner Giudice:

I am writing on behalf of First Wind in response to the invitation from the Department of Energy Resources ("DOER") to submit comments on the feasibility of instituting a capacity requirement on electricity imported into the ISO-New England ("ISO-NE") control area from renewable generators located in control areas outside of and adjacent to ISO-NE. This letter expands upon First Wind's testimony delivered at the September 23rd stakeholder meeting on this provision of the Green Communities Act ("Act").

First Wind is an independent North American wind power company focused exclusively on the development, ownership, and operation of wind energy projects. Our principal offices are located in Newton, Massachusetts. First Wind currently owns and operates three projects, including the 42 MW Mars Hill project in Maine, New England's largest utility-scale operating wind energy project, which supplies renewable energy certificates ("RECs") to the Massachusetts market. Importantly, this project is outside of the ISO-NE market, and its power is imported into the Massachusetts market from northern Maine.

The request for comments from DOER included specific questions. The questions and our answers to those questions are below, followed by a summary of First Wind's comments.

1. How should "feasible" be defined and why?

First Wind suggests that there are certain principles that are necessary components of sound policy-making with respect to the issue of a capacity requirement on imports. These policy-making principles also have relevance (along with a number of other factors) to determining whether the import provision is feasible. These principles include the following:

- Establishing renewable electricity import standards that are fair, practical, and encourage long-term commitment to supplying Massachusetts and New England;
- Holding harmless projects that were substantially underway prior to the proposed change;
- Achieving an appropriate REC supply balance so that neither of the following occur:
 - a flood of imports that would swamp the Renewable Portfolio Standard ("RPS") program and drive REC values too low to support in-system renewable development;
 - a virtual elimination of imports that results in a shortage of RECs that would drive prices up in a manner that would harm consumers;

- Supporting the RPS program's objectives of increasing the supply of renewable power to Massachusetts, diversifying the resource mix, reducing price volatility and reliance on imported fuels, and improving the environmental characteristics of the electricity supplied to the state;
- Treating all of the RPS-eligible renewable generation resources equitably and not favoring one type of renewable generation over others;
- Stimulating regional investment and green collar job growth;
- And, finally, not running afoul of free trade protections in the Constitution or international trade agreements.

As changes to the RPS are contemplated, it is important to maintain a focus on the fundamental purposes of the RPS program, as outlined in the bullets above.¹ The RPS's primary objective is not, and was never intended to be, expanding capacity for reliability purposes or achieving economic development benefits from only local generation. While these are meritorious objectives, it is important that they not overwhelm pursuit of a more diverse, environmentally friendly, and indigenous fuel mix to supply Massachusetts consumers. And to the degree a fix needs to be made to the RPS due to concerns about future imbalances in the supply-demand ratio (which can make a RPS ineffective if a REC oversupply occurs and drives prices too low to encourage renewable development), there are other, better policy options than arbitrarily restricting imports. For instance, demand could be increased by simply raising the RPS percentage, or other policies to encourage renewable development could be established (i.e., development grants for Massachusetts-based projects).

2. Are implementation of subsections (c) and (e) of Section 105 of the Act feasible now? If not now, when and why?

For wind power facilities in adjacent control areas, the most significant problem that would be created by the import provision is that it would impose an obligation to become a committed capacity resource. This poses potential significant financial risks for wind power projects that other renewable technologies (e.g., biomass) would not face. Under ISO-NE rules, external resources must participate in the day-ahead market and therefore be exposed, if actual generation output doesn't meet expected output, to real-time spot market prices. One of the concerns this raises is that the development of wind generation often requires the selling forward of energy and RECs in order to secure financing. The capacity obligation would inject heightened uncertainty and risk into the prospects of long-term REC sales. (In fact, uncertainty in RPS policy is already resulting in contraction in the REC market, as prospective purchasers for five-year REC contracts have gone from plentiful in recent years to almost none today.) Lenders would not lend sufficient capital to wind projects that lack long-term REC sales contracts, and developers would choose not to import the renewable energy in to ISO-NE. In summary,

¹ The objectives of the RPS were described as follows at the time the program's original regulations were written: The RPS is expected to stimulate development of new electric generating units that use renewable fuels and technologies, and thereby accomplish the following policy objectives:

- Decrease pollution from existing power plants,
- Diversify the fuels used to generate power in or near our region,
- Decrease our reliance on fuels imported from other regions, and
- Moderate price volatility caused by reliance on imported fuels.

(Background Document on the Proposed Regulation for the Renewable Energy Portfolio Standard, 225 CMR 14.00, October 3, 2001, page 1.)

the capacity requirement would exclude imported wind power from participating in the Massachusetts RPS.

Accordingly, this capacity requirement on imports could have the consequence of lessening the participation of new renewable resources in the RPS because it could make financing more problematic. This is especially true because, as outlined below, it would be essentially a retroactive change for projects already in the pipeline, given the time it takes to develop new wind facilities.

Proponents of the Act's capacity import provision have argued for rewarding renewable generators willing to make a long-term commitment to supplying the ISO-New England region, and discouraging merchant activity when generators regularly jump in and out of this market. As a company that will be supplying New England consumers from wind energy projects located both within and without the ISO-New England region when this provision would take effect, First Wind would be pleased to demonstrate our long-term commitment to this region.

We believe that a better approach to securing such a commitment would be a requirement that imports make a long-term commitment of energy. It would be less cumbersome, less discriminatory against certain generation resources, and easier to enforce than a capacity requirement. Also, it would be consistent with the RPS's customary focus on energy (and not capacity). To be eligible for Massachusetts RECs, an importer could be required to sign a long-term energy contract (five years, perhaps) with a counterparty to supply energy to customers in the ISO-New England region. Requiring energy contracts would establish a longer and more committed relationship between an importer and New England customers than would be brought about by the capacity requirement. **First Wind encourages DOER to strongly consider recommending in its report to the Legislature that it opt for a long-term energy contract requirement (five years or more in duration) to avoid the significant shortcomings of the capacity requirement and to achieve the primary goal of encouraging commitment to serving New England.**

As it moves from one set of policies to a new one, the RPS' basic purpose would be undercut if it appears that that program's rules will change during a project's construction period in a way that changes the project from an economically viable project to marginal (or worse) by the time development is completed. First Wind has invested hundreds of millions of dollars under the existing RPS rules², and changing those rules in a manner that would penalize that investment would call into question the predictability and value of the RPS. Additionally, First Wind has identified new projects in northern Maine that would import into ISO-NE, but the capacity requirement has the potential to severely limit if not make it economically impossible for this energy to flow to consumers in the ISO-New England market.

While the import provision raises a variety of issues, First Wind understands the need to periodically examine RPS policies. However, given the long lead time for developing renewable energy facilities, it is

² Based on the existing RPS rules that have been in place since 2002, First Wind began developing two projects in New York: the Cohocton Wind Farm (125 MW) and Windfarm Prattsburgh (54 MW). Construction on the Cohocton Wind Farm commenced last year, and we are finishing pre-construction activities on Windfarm Prattsburgh. Construction is expected to commence in 2009. The total cost of these projects is in the hundreds of millions of dollars, and one of the cornerstones of First Wind's investment strategy was to import portions of the energy from these projects into Massachusetts to satisfy the RPS goals.

critical that changes to the RPS recognize that projects in advanced development are as worthy of grandfathering as those already built. To that end, if DOER determines that the import provision is feasible, **First Wind urges that the report to the Legislature and any subsequent rulemaking include a provision to grandfather any facility that has received a statement of qualification from DOER by December 31st, 2009 from any changes in the RPS relating to imports for at least ten years.**

Finally, we commend DOER for commissioning Navigant to assess the potential for renewable power (including wind) development in Massachusetts and how that potential compares with the Commonwealth's RPS goals. As a Massachusetts-based company that plans to develop wind power both inside and outside of the state to meet some of that RPS demand, First Wind believes this is an important question. That said, given the realities of developing projects here, we would not recommend setting policies based on an assumption that Massachusetts will host 3000MW of wind by 2020. Until large renewable projects have been successfully developed in the Commonwealth, we would caution against making a goal of this size a determinant in the question of the feasibility of import restrictions.³ Furthermore, from the perspective of a local company with an interest in developing local projects, the biggest challenges to developing large wind facilities in Massachusetts are related to the high cost of building facilities, the lack of wind resources in suitable locations, and siting and permitting difficulties. Restricting imports to increase REC prices would not lessen these challenges and therefore would do little to increase Massachusetts' attractiveness as a place to develop wind projects.

3. *If feasible, what mechanisms either are in place, or can and must be established to monitor and verify compliance of each subsection? What would be the cost (in terms of finance and/or time) for such monitoring and verification of each?*

First Wind does not have lengthy comments on the netting issue, but questions the degree to which, as a practical matter, the actions this provision attempts to stop have been documented as a real problem. It appears less than clear whether so-called "round-tripping" activity exists to any significant degree. Accordingly, prior to establishing a policy that could be difficult and costly to enforce, we suggest the DOER conduct a thorough analysis of the need for a netting provision prior to making a decision on the feasibility of, or means of enforcing, this provision.

Additionally, a potentially preferable means of addressing the round-tripping issue is to revise the Imported Unit Energy Seller Certification, which all importers of renewable energy must file on an annual basis with the NEPOOL GIS Administrator. The certification could be amended to include language indicating that an importer is not engaging in round-tripping. An example of such language inserted into a certificate is enclosed (the proposed new text is underlined).

4. *With regard to subsection (e), over what time spans and how frequently could and should import and export transactions be "netted?"*

First Wind has no comment on this issue.

³ Additionally, we note that the report itself says, "The scenarios do not represent an NCI prediction or forecast, and they are not meant for predicting or bounding the most likely future." (page 5)

Conclusion

In conclusion, the import provision in the Act, by seeking to add restrictions to the RPS program regarding the import of energy from renewable generators, has the potential to significantly impact the viability of First Wind's existing and planned projects in New England and New York. First Wind has committed hundreds of millions of dollars to projects that are either operating or under construction that could be affected by this restriction.

Given the current economic climate, and specifically high energy costs, it is a particularly poor time to heavily and artificially restrict the importation of renewable power. It would increase the risk of a substantial increase in the amount of alternative compliance payments made and the loss of opportunities to readily displace fossil generation, particularly when coupled with the Act's increase of the RPS percentage requirement indefinitely into the future. More, and not less, should be done to encourage the development of wind power both within and without the borders of the Commonwealth and ISO-NE. At the same time, the interest policymakers have in ensuring that renewable generators will stay committed to the ISO-NE market can be achieved through a requirement that importing generators sign long-term energy contracts to serve New England.

Finally, until new renewable projects are built in Massachusetts, it is unwise to penalize those that have made substantial investment in successfully siting new renewable throughout New England and the northeast to serve the Massachusetts (and ISO-NE) market. At a minimum, grandfathering projects that are in advanced development is necessary to keep faith with those who are answering the call of the RPS to invest millions in renewable power development.

First Wind looks forward to continuing to work with the DOER throughout its feasibility study process and we look forward to continuing to grow our operations and our investment in Massachusetts and New England. Thank you for the opportunity to provide these comments.

Sincerely,



Paul Gaynor
President and Chief Executive Officer

Enclosure

cc: The Hon. Michael Morrissey
The Hon. Brian Dempsey
Secretary Ian Bowles
Rob Sydney
Courtney Feeley Karp
Dwayne Breger
Howard Bernstein

Imported Unit Energy Seller Certification

_____ [a _____ [corporation] with its principal office in _____] [a person whose principal place of residence is _____] ("Seller") certifies to the Participants in the New England Power Pool that, other than the Sale (defined below), it has not retired, sold, claimed, represented as part of Energy sold elsewhere, or used to satisfy obligations in any jurisdiction outside of New England any of the fuel source, emission or labor attributes (the "Attributes") associated with the Imported Unit Energy from the [name of renewable facility] it sold for the calendar year [200] to _____, [a _____ [corporation] with its principal office in _____] [a person whose principal place of residence is _____] (the "Sale").

Seller participates in the markets administered by ISO-NE and adjacent control areas or ISOs. During any energy hour, Seller may import power into and export power out of NYISO or other adjacent control area and/or ISO-NE. Seller certifies to the Participants that it has not scheduled nor caused or directed another party to schedule specific, simultaneous, and directly offsetting export transactions for power (from any source) that are intended to have the result of only delivering a REC but no energy into the ISO-NE system.

Seller further promises that it will not retire, sell or claim the Attributes, represent the Attributes as part of Energy sold or use the Attributes to satisfy obligations in another jurisdiction, other than in connection with the Sale.

Capitalized terms not otherwise defined herein have the meanings given to them in the Restated New England Power Pool Agreement or the New England Power Pool Generation Information System Operating Rules, each as amended and restated from time to time.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, this certification is true, correct and complete in all material respects.

[Seller]

By: _____
Name:
Title:
Date: